

REFERENCE TITLE: public retirement plans; administration amendments

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1359

Introduced by
Senator Huppenthal

AN ACT

AMENDING SECTIONS 38-431.08, 38-446, 38-806, 38-809, 38-810.02, 38-842, 38-843.03, 38-846, 38-848, 38-849, 38-850 AND 38-855, ARIZONA REVISED STATUTES; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 335, SECTION 8; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 324, SECTION 1; AMENDING SECTIONS 38-886, 38-888, 38-897, 38-900.01, 38-901, 38-921 AND 38-922, ARIZONA REVISED STATUTES; RELATING TO PUBLIC RETIREMENT PLANS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-431.08, Arizona Revised Statutes, is amended to
3 read:

4 38-431.08. Exceptions: limitation

5 A. This article does not apply to:

6 1. Any judicial proceeding of any court or any political caucus of the
7 legislature.

8 2. Any conference committee of the legislature, except that all such
9 meetings shall be open to the public.

10 3. The commissions on appellate and trial court appointments and the
11 commission on judicial qualifications.

12 4. Good cause exception determinations and hearings conducted by the
13 board of fingerprinting pursuant to section 41-619.55.

14 5. CONFERENCE CALLS AND MEETINGS OF THE FUND MANAGER OF THE PUBLIC
15 SAFETY PERSONNEL RETIREMENT SYSTEM THAT ARE HELD ONLY FOR THE PURPOSE OF
16 DISCUSSING OR TAKING ACTION ON PRIVATE EQUITY, JOINT VENTURE OR REAL ESTATE
17 RELATED INVESTMENT PURPOSES OR THAT ARE REQUIRED BY SUDDEN SHIFTS OF THE
18 CAPITAL MARKETS.

19 B. A hearing held within a prison facility by the board of executive
20 clemency is subject to this article, except that the director of the state
21 department of corrections may:

22 1. Prohibit, on written findings that are made public within five days
23 of so finding, any person from attending a hearing whose attendance would
24 constitute a serious threat to the life or physical safety of any person or
25 to the safe, secure and orderly operation of the prison.

26 2. Require a person who attends a hearing to sign an attendance log.
27 If the person is over sixteen years of age, the person shall produce
28 photographic identification which verifies the person's signature.

29 3. Prevent and prohibit any articles from being taken into a hearing
30 except recording devices, and if the person who attends a hearing is a member
31 of the media, cameras.

32 4. Require that a person who attends a hearing submit to a reasonable
33 search on entering the facility.

34 C. The exclusive remedies available to any person who is denied
35 attendance at or removed from a hearing by the director of the state
36 department of corrections in violation of this section shall be those
37 remedies available in section 38-431.07, as against the director only.

38 D. Either house of the legislature may adopt a rule or procedure
39 pursuant to article IV, part 2, section 8, Constitution of Arizona, to
40 provide an exemption to the notice and agenda requirements of this article or
41 to allow standing or conference committees to meet through technological
42 devices rather than only in person.

1 Sec. 2. Section 38-446, Arizona Revised Statutes, is amended to read:
2 38-446. Acts based on written opinions: immunity

3 Notwithstanding any provision of law to the contrary, no public officer
4 or employee is personally liable for acts done in his official capacity in
5 good faith reliance on written opinions of the attorney general issued
6 pursuant to section 41-193, ~~or~~ written opinions of a county attorney of the
7 county, ~~or~~ written opinions of the city or town attorney of the city or town
8 OR WRITTEN OPINIONS OF ANY AUTHORIZED PRIVATE ATTORNEY FOR ANY INDEPENDENT
9 PUBLIC RETIREMENT TRUST FUND OR SYSTEM for which the officer or employee
10 serves or is employed.

11 Sec. 3. Section 38-806, Arizona Revised Statutes, is amended to read:
12 38-806. Disability retirement pensions

13 A. A member who becomes permanently mentally or physically
14 incapacitated for the purpose of performing the duties of the member's office
15 may receive disability retirement benefits if the fund manager finds that all
16 of the following apply:

17 1. The member submits either personally or by a guardian an affidavit
18 as to the nature of the member's incapacity.

19 2. The member is medically examined by a board of three physicians,
20 one designated by the administrator of the fund, one designated by the member
21 or the member's guardian and one designated by the governor.

22 3. A MAJORITY OF the board of physicians certifies to the fund manager
23 that:

24 (a) The member is mentally or physically incapacitated for the purpose
25 of performing the duties of the member's office. ~~;~~

26 (b) The member's incapacity OCCURRED DURING THE MEMBER'S TERM OF
27 OFFICE AND is expected to be of an indefinite duration. ~~and~~

28 (c) The member should be retired.

29 B. On retirement by reason of disability under this section, a retired
30 member shall receive a pension computed pursuant to section 38-808,
31 subsection B, paragraph 2 until the member's death or until the member's
32 pension is suspended, revoked or discontinued pursuant to this section.

33 C. If the fund manager has reason to believe that a member, retired
34 pursuant to this section but not yet eligible for normal retirement, may no
35 longer be mentally or physically incapacitated from performing the duties of
36 the public office from which the member retired, the fund manager may require
37 such retired member to be medically examined. The examination shall be
38 conducted by a board of three physicians, one designated by the administrator
39 of the fund, one designated by the retired member or the member's guardian
40 and one designated by the governor.

41 D. The fund manager shall discontinue pension payments to a member
42 retired pursuant to this section, if the board of physicians certifies that
43 the member is mentally and physically capable of performing the duties of the
44 public office from which the member retired.

1 E. If the retired member refuses to submit to the medical examination,
2 the administrator of the fund may suspend payment of the member's pension
3 until the member submits to the medical examination. If the retired member
4 refuses for one year or more to submit to medical examination, the fund
5 manager shall revoke the pension of a member retired under this section.

6 Sec. 4. Section 38-809, Arizona Revised Statutes, is amended to read:
7 38-809. Correction of pension payment errors; assignments
8 prohibited; liability

9 A. If the plan has made pension payments based on incorrect
10 information and a person or an estate has been paid more or less than ~~he~~ THE
11 PERSON OR ESTATE would have been paid if the information had been correct,
12 the fund manager shall adjust future payments so that the proper amount is
13 paid. The adjustment may be made in such a manner that the equivalent
14 actuarial present value of the benefit to which the person or estate is
15 correctly entitled is paid.

16 B. Notwithstanding any other statute, benefits, member contributions
17 or court fees including interest earnings and all other credits payable under
18 the plan are not subject in any manner to anticipation, alienation, sale,
19 transfer, assignment, pledge, encumbrance, charge, garnishment, execution or
20 levy of any kind, either voluntary or involuntary, before actually being
21 received by the person entitled to the benefit, contribution, earning or
22 credit under the terms of the plan, and any attempt to dispose of any right
23 under the terms of the plan as proscribed in this subsection is void. The
24 fund is not liable for or subject to the debts, contracts, liabilities,
25 enlargements or torts of any person entitled to a benefit, contribution,
26 earning or credit under the terms of the plan.

27 C. Nothing in this section exempts employee benefits of any kind from
28 a writ of attachment, a writ of execution, a writ of garnishment and orders
29 of assignment issued by a court of record as the result of a judgment for
30 arrearages of child support or for child support debt.

31 D. A PERSON WHO DEFRAUDS THE PLAN OR WHO TAKES, CONVERTS, STEALS OR
32 EMBEZZLES MONIES OWNED BY OR FROM THE PLAN AND WHO FAILS OR REFUSES TO RETURN
33 THE MONIES TO THE PLAN ON THE FUND MANAGER'S WRITTEN REQUEST IS SUBJECT TO A
34 CIVIL SUIT BY THE PLAN IN THE SUPERIOR COURT OF MARICOPA COUNTY. ON ENTRY OF
35 AN ORDER FINDING THE PERSON HAS DEFRAUDED THE PLAN OR TAKEN, CONVERTED,
36 STOLEN OR EMBEZZLED MONIES OWNED BY OR FROM THE PLAN, THE COURT SHALL ENTER
37 AN ORDER AGAINST THAT PERSON AND FOR THE PLAN AWARDING THE PLAN ALL OF ITS
38 COSTS AND EXPENSES OF ANY KIND, INCLUDING ATTORNEY FEES, THAT WERE NECESSARY
39 TO SUCCESSFULLY PROSECUTE THE ACTION. THE COURT SHALL ALSO GRANT THE PLAN A
40 JUDICIAL LIEN ON ALL OF THE NONEXEMPT PROPERTY OF THE PERSON AGAINST WHOM
41 JUDGMENT IS ENTERED PURSUANT TO THIS SUBSECTION IN AN AMOUNT EQUAL TO ALL
42 AMOUNTS AWARDED TO THE PLAN, PLUS INTEREST AT THE RATE PRESCRIBED BY SECTION
43 44-1201, SUBSECTION A, UNTIL ALL AMOUNTS OWED ARE PAID TO THE PLAN.

44 E. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE FUND
45 MANAGER MAY OFFSET AGAINST ANY BENEFITS OTHERWISE PAYABLE BY THE PLAN TO AN

1 ACTIVE OR RETIRED MEMBER OR SURVIVOR ANY COURT ORDERED AMOUNTS AWARDED TO THE
2 FUND MANAGER AND PLAN AND ASSESSED AGAINST THE MEMBER OR SURVIVOR.

3 Sec. 5. Section 38-810.02, Arizona Revised Statutes, is amended to
4 read:

5 38-810.02. Statutory construction

6 A. Because the plan as enacted at a particular time is a unique
7 amalgam of rights and obligations having a critical impact on the actuarial
8 integrity of the plan, the legislature intends that the plan as enacted at a
9 particular time be construed and applied as a coherent whole and without
10 reference to any other provision of the plan in effect at a different time SO
11 THAT MEMBERS, SURVIVORS AND BENEFICIARIES ARE NOT ENTITLED TO CHOOSE
12 PROVISIONS FROM DIFFERENT GENERATIONS OF THE PLAN'S ENABLING LEGISLATION WITH
13 THE INTENT OF DEMANDING THE RIGHT TO RETIRE OR RECEIVE BENEFITS UNDER THE
14 COMBINED TERMS OF THESE PROVISIONS. MEMBERS AND SURVIVORS ARE ENTITLED TO BE
15 GOVERNED BY THE SUBSTANTIVE TERMS OF THE PLAN'S ENABLING LEGISLATION IN
16 EFFECT DURING ANY POINT OF THE MEMBER'S SERVICE. TO PREVENT AN UNEXPECTED
17 ACTUARIAL LOSS, TO AVOID UPSETTING THE ACTUARIAL INTEGRITY OF THE PLAN AT
18 ANY GIVEN PERIOD OF TIME, TO AVOID DEFEATING THE PLAN'S PURPOSE OF PROVIDING
19 UNIFORM BENEFITS AND TO AVOID PROVIDING SOME MEMBERS AND SURVIVORS WITH
20 BENEFITS MORE ADVANTAGEOUS THAN THOSE ENJOYED BY OTHERS, MEMBERS AND
21 SURVIVORS ARE NOT ENTITLED TO CHOOSE PROVISIONS FROM DIFFERENT GENERATIONS OF
22 THE PLAN'S ENABLING LEGISLATION BUT SHALL ELECT ONE SUCH GENERATION TO
23 CONTROL ALL OF THEIR PENSION RIGHTS.

24 B. The plan was established in order to provide a uniform, consistent
25 and equitable statewide program for those eligible elected officials as
26 defined by the plan. A member of the plan does not have a vested right to
27 benefits under the plan until the member files an application for benefits
28 and is found eligible for those benefits. An eligible claimant's right to
29 benefits vests on the date of the member's application for those benefits or
30 the member's last day of employment under the plan, whichever occurs first.

31 Sec. 6. Section 38-842, Arizona Revised Statutes, is amended to read:

32 38-842. Definitions

33 In this article, unless the context otherwise requires:

34 1. "Accidental disability" means a physical or mental condition which
35 the local board finds totally and permanently prevents an employee from
36 performing a reasonable range of duties within the employee's job
37 classification and was incurred in the performance of the employee's duty.

38 2. "Accumulated contributions" means, for each member, the sum of the
39 amount of the member's aggregate contributions made to the fund and the
40 amount, if any, attributable to the employee's contributions prior to the
41 member's effective date under another public retirement system, other than
42 the federal social security act, and transferred to the fund minus the
43 benefits paid to or on behalf of the member.

44 3. "Actuarial equivalent" means equality in present value of the
45 aggregate amounts expected to be received under two different forms of

1 payment, based on mortality and interest assumptions adopted by the fund
2 manager. The fund manager may from time to time change the mortality and
3 interest assumptions.

4 4. "Average monthly benefit compensation" means the result obtained by
5 dividing the total compensation paid to an employee during a considered
6 period by the number of months, including fractional months, in which such
7 compensation was received. The considered period shall be the three
8 consecutive years within the last twenty completed years of credited service
9 which yield the highest average. In the computation under this paragraph a
10 period of nonpaid or partially paid industrial leave shall be considered
11 based on the compensation the employee would have received in the employee's
12 job classification if the employee was not on industrial leave.

13 5. "Catastrophic disability" means a physical **AND NOT A PSYCHOLOGICAL**
14 condition ~~that is not an accidental disability~~, that the local board
15 determines prevents the employee from **EVER** totally and permanently engaging
16 in any gainful employment and that results from a ~~catastrophic~~ physical
17 injury incurred in the performance of the employee's duty.

18 6. "Certified peace officer" means a peace officer certified by the
19 Arizona peace officers standards and training board.

20 7. "Claimant" means any member or beneficiary who files an application
21 for benefits pursuant to this article.

22 8. "Compensation" means, for the purpose of computing retirement
23 benefits, base salary, overtime pay, shift differential pay and holiday pay
24 paid to an employee by the employer on a regular monthly, semimonthly or
25 biweekly payroll basis and longevity pay paid to an employee at least every
26 six months for which contributions are made to the system pursuant to section
27 38-843, subsection D. Compensation does not include, for the purpose of
28 computing retirement benefits, payment for unused sick leave, payment in lieu
29 of vacation, payment for compensatory time, **PAYMENT FOR ON-CALL TIME** or any
30 ~~other~~ payment for fringe benefits. **FOR THE PURPOSES OF THIS PARAGRAPH, "BASE**
31 **SALARY" MEANS THE AMOUNT OF COMPENSATION EACH EMPLOYEE IS REGULARLY PAID FOR**
32 **PERSONAL SERVICES RENDERED TO AN EMPLOYER BEFORE THE ADDITION OF ANY EXTRA**
33 **MONIES, INCLUDING OVERTIME PAY, SHIFT DIFFERENTIAL PAY, HOLIDAY PAY,**
34 **LONGEVITY PAY, ON-CALL PAY, FRINGE BENEFIT PAY AND SIMILAR EXTRA PAYMENTS.**

35 9. "Credited service" means the member's total period of service prior
36 to the member's effective date of participation, plus those compensated
37 periods of the member's service thereafter for which the member made
38 contributions to the fund.

39 10. "Depository" means a bank in which all monies of the system are
40 deposited and held and from which all expenditures for benefits, expenses and
41 investments are disbursed.

42 11. "Effective date of participation" means July 1, 1968, except with
43 respect to employers and their covered employees whose contributions to the
44 fund commence thereafter, the effective date of their participation in the
45 system is as specified in the applicable joinder agreement.

1 12. "Effective date of vesting" means the date a member's rights to
2 benefits vest pursuant to section 38-844.01.

3 13. "Eligible child" means the unmarried child of a deceased member who
4 is under the age of eighteen or a full-time student who is under the age of
5 twenty-three or under a disability which began before the child attained the
6 age of twenty-three and who remains a dependent of the surviving spouse or
7 guardian.

8 14. "Eligible groups" means only the following who are regularly
9 assigned to hazardous duty:

10 (a) Municipal police officers who are certified peace officers.

11 (b) Municipal fire fighters.

12 (c) Paid full-time fire fighters employed directly by a fire district
13 organized pursuant to section 48-803 or 48-804 with three or more full-time
14 fire fighters, but not including fire fighters employed by a fire district
15 pursuant to a contract with a corporation.

16 (d) State highway patrol officers who are certified peace officers.

17 (e) State fire fighters.

18 (f) County sheriffs and deputies who are certified peace officers.

19 (g) Fish and game wardens who are certified peace officers.

20 (h) Police officers who are certified peace officers and fire fighters
21 of a nonprofit corporation operating a public airport pursuant to sections
22 28-8423 and 28-8424. A police officer shall be designated pursuant to
23 section 28-8426 to aid and supplement state and local law enforcement
24 agencies and a fire fighter's sole duty shall be to perform fire fighting
25 services, including services required by federal regulations.

26 (i) Police officers who are certified peace officers and who are
27 appointed by the Arizona board of regents.

28 (j) Police officers who are certified peace officers and who are
29 appointed by a community college district governing board.

30 (k) State attorney general investigators who are certified peace
31 officers.

32 (l) County attorney investigators who are certified peace officers.

33 (m) Police officers who are certified peace officers and who are
34 employed by an Indian reservation police agency.

35 (n) Fire fighters who are employed by an Indian reservation fire
36 fighting agency.

37 (o) Police officers who are certified peace officers and who are
38 appointed by the department of administration.

39 (p) Department of liquor licenses and control investigators who are
40 certified peace officers.

41 (q) Arizona department of agriculture officers who are certified peace
42 officers.

43 (r) Arizona state parks board rangers and managers who are certified
44 peace officers.

45 (s) County park rangers who are certified peace officers.

1 15. "Employee" means any person who is employed by a participating
2 employer and who is a member of an eligible group but does not include any
3 persons compensated on a contractual or fee basis. If an eligible group
4 requires certified peace officer status and at the option of the local board,
5 employee may include a person who is training to become a certified peace
6 officer.

7 16. "Employers" means:

8 (a) Cities contributing to the fire fighters' relief and pension fund
9 as provided in sections 9-951 through 9-971 or statutes amended thereby and
10 antecedent thereto, as of June 30, 1968 on behalf of their full-time paid
11 fire fighters.

12 (b) Cities contributing under the state police pension laws as
13 provided in sections 9-911 through 9-934 or statutes amended thereby and
14 antecedent thereto, as of June 30, 1968 on behalf of their municipal
15 policemen.

16 (c) The state highway patrol covered under the state highway patrol
17 retirement system.

18 (d) The state, or any political subdivision thereof, including but not
19 limited to towns, cities, fire districts, counties and nonprofit corporations
20 operating public airports pursuant to sections 28-8423 and 28-8424, which has
21 elected to participate in the system on behalf of an eligible group of public
22 safety personnel pursuant to a joinder agreement entered into after July 1,
23 1968.

24 (e) Indian tribes which have elected to participate in the system on
25 behalf of an eligible group of public safety personnel pursuant to a joinder
26 agreement entered into after July 1, 1968.

27 17. "Fund" means the public safety personnel retirement fund, which is
28 the fund established to receive and invest contributions accumulated under
29 the system and from which benefits are paid.

30 18. "Fund manager" means the fund manager of the system, who are the
31 persons appointed to invest and operate the fund.

32 19. "Local board" means the retirement board of the employer, who are
33 the persons appointed to administer the system as it applies to their members
34 in the system.

35 20. "Member" means any employee who meets all of the following
36 qualifications:

37 (a) Who is either a full-time paid municipal police officer, a
38 full-time paid fire fighter, a law enforcement officer who is employed by the
39 state including the director thereof, a state fire fighter who is primarily
40 assigned to fire fighting duties, a fire fighter or police officer of a
41 nonprofit corporation operating a public airport pursuant to sections 28-8423
42 and 28-8424, all ranks designated by the Arizona law enforcement merit system
43 council, a state attorney general investigator who is a certified peace
44 officer, a county attorney investigator who is a certified peace officer, a
45 police officer who is appointed by the department of administration and who

1 is a certified peace officer, a department of liquor licenses and control
 2 investigator who is a certified peace officer, an Arizona department of
 3 agriculture officer who is a certified peace officer, an Arizona state parks
 4 board ranger or manager who is a certified peace officer, a county park
 5 ranger who is a certified peace officer, a person who is a certified peace
 6 officer and who is employed by an Indian reservation police agency, a fire
 7 fighter who is employed by an Indian reservation fire fighting agency or an
 8 employee included in a group designated as eligible employees under a joinder
 9 agreement entered into by their employer after July 1, 1968 and who is or was
 10 regularly assigned to hazardous duty.

11 (b) Who, on or after the employee's effective date of participation,
 12 is receiving compensation for personal services rendered to an employer or
 13 would be receiving compensation except for an authorized leave of absence.

14 (c) Whose employment with an employer commenced prior to attainment of
 15 age fifty.

16 (d) Whose customary employment is at least forty hours per week and
 17 for more than six months in a calendar year.

18 (e) Who has not attained age sixty-five prior to the employee's
 19 effective date of participation or who was over age sixty-five with
 20 twenty-five years or more of service prior to the employee's effective date
 21 of participation.

22 21. "Normal retirement date" means the first day of the calendar month
 23 immediately following an employee's completion of twenty years of service or
 24 the employee's sixty-second birthday and the employee's completion of fifteen
 25 years of service.

26 22. "Ordinary disability" means a physical condition which the local
 27 board determines will prevent an employee totally and permanently from
 28 performing a reasonable range of duties within the employee's department or a
 29 mental condition which the local board determines will prevent an employee
 30 totally and permanently from engaging in any substantial gainful activity.

31 23. "Pension" means a series of monthly amounts which are payable to a
 32 person who is entitled to receive benefits under the plan.

33 24. "Regularly assigned to hazardous duty" means regularly assigned to
 34 duties of the type normally expected of municipal police officers, municipal
 35 or state fire fighters, eligible fire district fire fighters, state highway
 36 patrol officers, county sheriffs and deputies, fish and game wardens, fire
 37 fighters and police officers of a nonprofit corporation operating a public
 38 airport pursuant to sections 28-8423 and 28-8424, police officers who are
 39 appointed by the Arizona board of regents or a community college district
 40 governing board, state attorney general investigators who are certified peace
 41 officers, county attorney investigators who are certified peace officers,
 42 police officers who are appointed by the department of administration and who
 43 are certified peace officers, department of liquor licenses and control
 44 investigators who are certified peace officers, Arizona department of
 45 agriculture officers who are certified peace officers, Arizona state parks

1 board rangers and managers who are certified peace officers, county park
2 rangers who are certified peace officers, police officers who are certified
3 peace officers and are employed by an Indian reservation police agency or
4 fire fighters who are employed by an Indian reservation fire fighting
5 agency. Those individuals who are assigned solely to support duties such as
6 secretaries, stenographers, clerical personnel, clerks, cooks, maintenance
7 personnel, mechanics and dispatchers are not assigned to hazardous duty
8 regardless of their position classification title. Since the normal duties
9 of municipal police officers, municipal or state fire fighters, eligible fire
10 district fire fighters, state highway patrol officers, county sheriffs and
11 deputies, fish and game wardens, fire fighters and police officers of a
12 nonprofit corporation operating a public airport pursuant to sections 28-8423
13 and 28-8424, police officers who are appointed by the Arizona board of
14 regents or a community college district governing board, state attorney
15 general investigators who are certified peace officers, county attorney
16 investigators who are certified peace officers, police officers who are
17 appointed by the department of administration and who are certified peace
18 officers, department of liquor licenses and control investigators who are
19 certified peace officers, Arizona department of agriculture officers who are
20 certified peace officers, Arizona state parks board rangers and managers who
21 are certified peace officers, county park rangers who are certified peace
22 officers, police officers who are certified peace officers and are employed
23 by an Indian reservation police agency and fire fighters who are employed by
24 an Indian reservation fire fighting agency are constantly changing, questions
25 as to whether a person is or was previously regularly assigned to hazardous
26 duty shall be resolved by the local board on a case-by-case basis.
27 Resolutions by local boards are subject to rehearing and appeal.

28 25. "Retirement" means termination of employment after a member has
29 fulfilled all requirements for a pension. Retirement shall be considered as
30 commencing on the first day of the month immediately following a member's
31 last day of employment or authorized leave of absence, if later.

32 26. "Service" means the last period of continuous employment of an
33 employee by the employers prior to the employee's retirement or the
34 employee's sixty-fifth birthday, whichever first occurs, except that if such
35 period includes employment during which the employee would not have qualified
36 as a member had the system then been effective, such as employment as a
37 volunteer fire fighter, then only twenty-five per cent of such noncovered
38 employment shall be considered as service. Any absence which is authorized
39 by an employer shall not be considered as interrupting continuity of
40 employment if the employee returns within the period of authorized absence.
41 Transfers between employers also shall not be considered as interrupting
42 continuity of employment. Any period during which a member is receiving sick
43 leave payments or a temporary disability pension shall be considered as
44 service. Any period during which a person was employed as a full-time paid
45 fire fighter by a fire district pursuant to a contract with a corporation

1 within that fire district shall be considered as service if it is part of the
2 person's last period of continuous employment with that corporation in that
3 fire district and the fire district has elected to treat the period as
4 service in its applicable joinder agreement. Any reference in this system to
5 the number of years of service of an employee shall be deemed to include
6 fractional portions of a year.

7 27. "State" means the state of Arizona, including any department,
8 office, board, commission, agency or other instrumentality of the state.

9 28. "System" means the public safety personnel retirement system
10 established by this article.

11 29. "Temporary disability" means a physical or mental condition which
12 the local board finds totally and temporarily prevents an employee from
13 performing a reasonable range of duties within the employee's department and
14 which was incurred in the performance of the employee's duty.

15 Sec. 7. Section 38-843.03, Arizona Revised Statutes, is amended to
16 read:

17 38-843.03. Statutory construction

18 Because the system as enacted at a particular time is a unique amalgam
19 of rights and obligations having a critical impact on the actuarial integrity
20 of the system, the legislature intends that the system as enacted at a
21 particular time be construed and applied as a coherent whole and without
22 reference to any other provision of the system in effect at a different time
23 SO THAT MEMBERS, SURVIVORS AND BENEFICIARIES ARE NOT ENTITLED TO CHOOSE
24 PROVISIONS FROM DIFFERENT GENERATIONS OF THE SYSTEM'S ENABLING LEGISLATION
25 WITH THE INTENT OF DEMANDING THE RIGHT TO RETIRE OR RECEIVE BENEFITS UNDER
26 THE COMBINED TERMS OF THESE PROVISIONS. MEMBERS AND SURVIVORS ARE ENTITLED
27 TO BE GOVERNED BY THE SUBSTANTIVE TERMS OF THE SYSTEM'S ENABLING LEGISLATION
28 IN EFFECT DURING ANY POINT OF THE MEMBER'S SERVICE. TO PREVENT AN UNEXPECTED
29 ACTUARIAL LOSS, TO AVOID UPSETTING THE ACTUARIAL INTEGRITY OF THE SYSTEM AT
30 ANY GIVEN PERIOD OF TIME, TO AVOID DEFEATING THE SYSTEM'S PURPOSE OF
31 PROVIDING UNIFORM BENEFITS AND TO AVOID PROVIDING SOME MEMBERS AND SURVIVORS
32 WITH BENEFITS MORE ADVANTAGEOUS THAN THOSE ENJOYED BY OTHERS, MEMBERS AND
33 SURVIVORS ARE NOT ENTITLED TO CHOOSE PROVISIONS FROM DIFFERENT GENERATIONS OF
34 THE SYSTEM'S ENABLING LEGISLATION BUT SHALL ELECT ONE SUCH GENERATION TO
35 CONTROL ALL OF THEIR PENSION RIGHTS.

36 Sec. 8. Section 38-846, Arizona Revised Statutes, is amended to read:

37 38-846. Death benefits

38 A. If the spouse of a member or retired member is surviving at such
39 member's death, the spouse shall be eligible for a surviving spouse's
40 pension, provided that such spouse had been married to the decedent either
41 for a period of at least two years prior to such member's date of death or
42 during such member's service. Payment of a surviving spouse's pension shall
43 commence as of the last day of the month following the member's or retired
44 member's date of death. The last payment shall be made as of the last day of
45 the month in which the surviving spouse's death occurs.

1 B. The surviving spouse of a deceased retired member shall receive a
2 monthly amount equal to four-fifths of the monthly amount of pension which
3 the decedent would have received immediately before death. The surviving
4 spouse of a deceased member who was not killed in the line of duty or did not
5 die from injuries suffered in the line of duty shall receive a monthly amount
6 computed as for the surviving spouse of a deceased retired member, under the
7 assumption that the member had retired for reason of accidental disability
8 immediately before death. The surviving spouse of a deceased member who is
9 killed in the line of duty or dies from injuries suffered in the line of duty
10 is entitled to receive a monthly amount equal to the deceased member's
11 average monthly benefit compensation less any amount payable for an eligible
12 child under this section. A member who was eligible for or receiving a
13 temporary disability pension at the time of the member's death is not deemed
14 to be retired for the purposes of this subsection. **FOR THE PURPOSES OF THIS**
15 **SUBSECTION, "KILLED IN THE LINE OF DUTY" MEANS THE DECEDENT'S DEATH WAS THE**
16 **DIRECT AND PROXIMATE RESULT OF PHYSICAL INJURIES INCURRED IN THE PERFORMANCE**
17 **OF THE DECEDENT'S PUBLIC SAFETY DUTIES AND DOES NOT INCLUDE SUICIDE.**

18 C. If at least one eligible child is surviving at the death of a
19 member or retired member, but no surviving spouse's pension then becomes
20 payable, a guardian's or conservator's pension shall be payable to the person
21 who is serving, or who is deemed by the local board to be serving, as the
22 legally appointed guardian or custodian of the eligible child. If an
23 eligible child of a member or retired member is surviving at the member's or
24 retired member's death, the eligible child is entitled to receive a child's
25 pension payable to the person who is serving or who is deemed by the local
26 board to be serving as the legally appointed guardian or custodian of the
27 eligible child. The member may also direct by designation to the local board
28 that the guardian or conservator pension or child's pension be paid to the
29 trustee of a trust created for the benefit of the eligible child. A
30 guardian's or conservator's pension shall also become payable if at least one
31 eligible child is surviving when a surviving spouse's pension terminates.

32 D. The fund manager shall pay a guardian's or conservator's pension
33 during the same period in which a pension is payable to at least one eligible
34 child. The guardian, conservator or designated trustee is entitled to
35 receive the same monthly amount as would have been payable to the decedent's
36 surviving spouse had a surviving spouse's pension become payable upon the
37 decedent's death.

38 E. Each eligible child is entitled to a monthly amount equal to
39 one-tenth of the monthly amount of pension which the deceased member or
40 retired member would have received immediately prior to death. A deceased
41 member shall be assumed to be retired for reasons of accidental disability
42 immediately before the member's death. If there are three or more children
43 eligible for a child's pension, a maximum of two shares of the child's
44 pension shall be payable, the aggregate of such shares to be apportioned in
45 equal measure to each eligible child.

F. If a member has accumulated contributions remaining in the system at the date of death of the last beneficiary, a lump sum refund of such accumulated contributions shall be payable to the person whom the member has designated as the member's refund beneficiary, or if the member's refund beneficiary is not then surviving, to the designated contingent refund beneficiary, or if the designated contingent refund beneficiary is not then surviving, to such person nearest of kin as selected by the local board. The amount of the lump sum refund shall be the remaining accumulated contributions.

G. In calculating the right to and the amount of the surviving spouse's pension, the law in effect on the date of the death of the member or retired member controls, unless the law under which the member retired provides for a greater benefit amount for a surviving spouse.

Sec. 9. Section 38-848, Arizona Revised Statutes, is amended to read:

38-848. Fund manager

A. The fund manager shall consist of five members and shall have the rights, powers and duties that are set forth in this section. The term of office of members shall be three years to expire on the third Monday in January of the appropriate year. Members are eligible to receive compensation in an amount of fifty dollars a day, but not to exceed one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title. The fund manager consists of the following members appointed by the governor pursuant to section 38-211:

1. One elected member from a local board to represent the employees.

2. One member to represent this state as an employer of public safety personnel. This member shall have the qualifications prescribed in subsection R of this section.

3. One member to represent the cities as employers of public safety personnel.

4. An elected county or state official or a judge of the superior court, court of appeals or supreme court.

5. One public member. This member shall have the qualifications prescribed in subsection R of this section.

B. All monies in the fund shall be deposited and held in a public safety personnel retirement system depository. Monies in the fund shall be disbursed from the depository separate and apart from all monies or funds of the state and the agencies, instrumentalities and subdivisions thereof. The monies shall be secured by the depository in which they are deposited and held to the same extent and in the same manner as required by the general depository law of the state. The fund is subject to the sole management of the fund manager for the purpose of this article.

C. All contributions under this system shall be forwarded to the fund manager and shall be held, invested and reinvested by the fund manager. All property and funds of the fund, including income from investments and from

1 all other sources, shall be retained for the exclusive benefit of members, as
 2 provided in the system, and shall be used to pay benefits to members or their
 3 beneficiaries or to pay expenses of operation and administration of the
 4 system and fund.

5 D. The fund manager shall have the full power in its sole discretion
 6 to invest and reinvest, alter and change the monies accumulated under the
 7 system. The fund manager may delegate the authority ~~to~~ **THE FUND MANAGER**
 8 deems necessary and prudent to the administrator, employed by the fund
 9 manager pursuant to subsection K, paragraph 6 of this section, **AND ANY**
 10 **ASSISTANT ADMINISTRATORS** to invest the monies of the system if the
 11 administrator ~~follows~~ **AND ANY ASSISTANT ADMINISTRATORS FOLLOW** the investment
 12 ~~guidelines, statement of investment policy and fund objectives~~ **POLICIES THAT**
 13 **ARE** promulgated by the fund manager. The fund manager may commingle
 14 securities and monies of the fund subject to the crediting of receipts and
 15 earnings and charging of payments to the account of the appropriate employer.
 16 In making every investment, the fund manager shall exercise the judgment and
 17 care under the circumstances then prevailing which ~~men~~ **PERSONS** of ordinary
 18 prudence, discretion and intelligence exercise in the management of their own
 19 affairs, not in regard to speculation but in regard to the permanent
 20 disposition of their funds, considering the probable income from their funds
 21 as well as the probable safety of their capital, provided:

22 1. That not more than seventy per cent of the pension fund shall be
 23 invested at any given time in corporate stocks, based on cost value of such
 24 stocks irrespective of capital appreciation, **EXCEPT THAT THIS LIMITATION DOES**
 25 **NOT APPLY TO THE SYSTEM'S DIRECT OR INDIRECT INVESTMENT IN EITHER:**

26 (a) **A LIMITED LIABILITY COMPANY.**

27 (b) **A CORPORATION, LIMITED PARTNERSHIP, PARTNERSHIP, JOINT VENTURE,**
 28 **LIMITED LIABILITY PARTNERSHIP OR TRUST IF THE SYSTEM OWNS AN INTEREST THROUGH**
 29 **ITS MEMBERSHIP INTEREST IN A LIMITED LIABILITY COMPANY.**

30 2. That no more than five per cent of the pension fund shall be
 31 invested in securities issued by any one institution, agency or corporation,
 32 other than securities issued as direct obligations of and fully guaranteed by
 33 the United States government.

34 3. That not more than five per cent of the voting stock of any one
 35 corporation shall be owned, **EXCEPT THAT THIS LIMITATION DOES NOT APPLY TO THE**
 36 **SYSTEM'S DIRECT OR INDIRECT INVESTMENT IN EITHER:**

37 (a) **A LIMITED LIABILITY COMPANY.**

38 (b) **A CORPORATION, LIMITED PARTNERSHIP, PARTNERSHIP, JOINT VENTURE,**
 39 **LIMITED LIABILITY PARTNERSHIP OR TRUST IF THE SYSTEM OWNS AN INTEREST THROUGH**
 40 **ITS MEMBERSHIP INTEREST IN AN EXCHANGE TRADED FUND OR LIMITED LIABILITY**
 41 **COMPANY.**

42 4. That corporate stocks **AND EXCHANGE TRADED FUNDS** eligible for
 43 purchase shall be restricted to stocks **AND EXCHANGE TRADED FUNDS** that, except
 44 for bank stocks, ~~and~~ insurance stocks **AND MEMBERSHIP INTERESTS IN LIMITED**
 45 **LIABILITY COMPANIES**, are either:

1 (a) Listed or approved on issuance for listing on an exchange
2 registered under the securities exchange act of 1934, as amended (15 United
3 States Code sections 78a through 7811).

4 (b) Designated or approved on notice of issuance for designation on
5 the national market system of a national securities association registered
6 under the securities exchange act of 1934, as amended (15 United States Code
7 sections 78a through 7811).

8 (c) Listed or approved on issuance for listing on an exchange
9 registered under the laws of this state or any other state.

10 (d) Listed or approved on issuance for listing on an exchange of a
11 foreign country with which the United States is maintaining diplomatic
12 relations at the time of purchase, except that no more than ten per cent of
13 the pension fund shall be invested in foreign equity securities on these
14 exchanges, based on the cost value of the stocks irrespective of capital
15 appreciation.

16 (e) AN EXCHANGE TRADED FUND THAT IS RECOMMENDED BY THE CHIEF
17 INVESTMENT OFFICER OF THE SYSTEM, THAT IS REGISTERED UNDER THE INVESTMENT
18 COMPANY ACT OF 1940 (15 UNITED STATES CODE SECTION 80a-1) AND THAT IS BOTH
19 TRADED ON A PUBLIC EXCHANGE AND BASED ON A PUBLICLY RECOGNIZED INDEX.

20 E. Notwithstanding any other law, the fund manager shall not be
21 required to invest in any type of investment that is dictated or required by
22 any entity of the federal government and that is intended to fund economic
23 development projects, public works or social programs, but may consider such
24 economically targeted investments pursuant to its fiduciary responsibility.
25 THE FUND MANAGER, ON BEHALF OF THE SYSTEM, MAY FORM, INVEST IN, LEND MONIES
26 TO OR GUARANTEE THE REPAYMENT OF MONIES BY A LIMITED LIABILITY COMPANY,
27 LIMITED PARTNERSHIP, JOINT VENTURE, PARTNERSHIP, LIMITED LIABILITY
28 PARTNERSHIP OR TRUST IN WHICH THE SYSTEM HAS A FINANCIAL INTEREST, WHETHER
29 THE ENTITY IS CLOSELY HELD OR PUBLICLY TRADED AND THAT, IN TURN, MAY BE
30 ENGAGED IN ANY LAWFUL ACTIVITY, INCLUDING THE OWNERSHIP, DEVELOPMENT,
31 MANAGEMENT, IMPROVEMENT OR OPERATION OF REAL PROPERTY AND ANY IMPROVEMENTS OR
32 BUSINESSES ON REAL PROPERTY, THE LENDING OF MONIES, THE INVESTMENT OF VENTURE
33 CAPITAL, OR THE CREATION, DEVELOPMENT OR FUNDING OF CORPORATIONS OR OTHER
34 ENTITIES WITH THE INTENT OF MAKING THE CORPORATIONS OR ENTITIES VALUABLE AND
35 PROFITABLE. THE FUND MANAGER MAY MAKE AN INVESTMENT IN ANY ASSET NOT
36 OTHERWISE LIMITED OR PROHIBITED BY THIS ARTICLE.

37 F. NOTWITHSTANDING ANY OTHER STATUTE, conference ~~call~~ CALLS AND
38 meetings of the fund manager of the public safety personnel retirement system
39 which are held ONLY for THE PURPOSE OF DISCUSSING OR TAKING ACTION ON PRIVATE
40 EQUITY, JOINT VENTURE OR REAL ESTATE RELATED investment purposes ~~only~~ OR THAT
41 ARE REQUIRED BY SUDDEN SHIFTS OF THE CAPITAL MARKETS are not subject to
42 chapter 3, article 3.1 of this title, except that the fund manager shall
43 maintain minutes of these conference ~~call~~ CALLS AND OTHER meetings and make
44 ALL PORTIONS OF them THAT DO NOT CONTAIN FINANCIAL OR COMMERCIAL INFORMATION
45 THAT THE FUND MANAGER DEEMS CONFIDENTIAL AND PROPRIETARY available for public

1 inspection within twenty-four hours after the meeting. The fund manager
2 shall review the minutes of each conference call meeting and shall ratify all
3 legal actions taken during each conference call meeting at the next scheduled
4 meeting of the fund manager.

5 G. The fund manager shall not be held liable for the exercise of more
6 than ordinary care and prudence in the selection of investments and
7 performance of its duties under the system and shall not be limited to
8 so-called "legal investments for trustees", but all funds of the system shall
9 be invested subject to all of the conditions, limitations and restrictions
10 imposed by law.

11 H. Except as provided in subsection D of this section, the fund
12 manager may:

13 1. Invest and reinvest the principal and income of the pension fund
14 without distinction between principal and income.

15 2. Sell, exchange, convey, transfer or otherwise dispose of any
16 investments of the fund held in the name of the system by private contract or
17 at public auction.

18 3. Also:

19 (a) Vote upon any stocks, bonds or other securities.

20 (b) Give general or special proxies or powers of attorney with or
21 without power of substitution.

22 (c) Exercise any conversion privileges, subscription rights or other
23 options and make any payments incidental to the exercise of the conversion
24 privileges, subscription rights or other options.

25 (d) Consent to or otherwise participate in corporate reorganizations
26 or other changes affecting corporate securities, delegate discretionary
27 powers and pay any assessments or charges in connection therewith.

28 (e) Generally exercise any of the powers of an owner with respect to
29 stocks, bonds, securities or other investments held in the fund.

30 4. Make, execute, acknowledge and deliver any other instruments that
31 may be necessary or appropriate to carry out the powers granted in this
32 section.

33 5. Register any investment held in the fund in the name of the fund or
34 in the name of a nominee.

35 6. At the expense of the system, enter into an agreement with any bank
36 or banks for the safekeeping and handling of securities and other investments
37 coming into the possession of the fund manager. The agreement shall be
38 entered into under terms and conditions that secure the proper safeguarding,
39 inventory, withdrawal and handling of the securities and other investments.
40 No access to and no deposit or withdrawal of the securities from any place of
41 deposit selected by the fund manager shall be permitted or made except as the
42 terms of the agreement may provide.

43 7. Appear before local boards and the courts of this state and
44 political subdivisions of this state through counsel or appointed
45 representative to protect the fund. The fund manager is not responsible for

1 the actions or omissions of the local boards under this system but may seek
2 review or rehearing of actions or omissions of local boards. The fund
3 manager does not have a duty to review actions of the local boards but may do
4 so in its discretion in order to protect the fund.

5 8. Empower the fund administrator to take actions on behalf of the
6 fund manager that are necessary for the protection and administration of the
7 fund in accordance with the guidelines of the fund manager.

8 9. Do all acts, whether or not expressly authorized that may be deemed
9 necessary or proper for the protection of the investments held in the fund.

10 I. Investment expenses and operation and administrative expenses of
11 the fund manager shall be accounted for separately and allocated against
12 investment income.

13 J. The fund manager, as soon as possible within a period of six months
14 following the close of any fiscal year, shall transmit to the governor and
15 the legislature an annual statement on the operation of the system
16 containing, among other things:

17 1. A balance sheet.

18 2. A statement of income and expenditures for the year.

19 3. A report on an actuarial valuation of its assets and liabilities.

20 4. A detailed statement of the investments acquired and disposed of
21 during the year.

22 5. A list of investments owned.

23 6. The total rate of return, yield on cost, and per cent of cost to
24 market value of the fund.

25 7. Any other statistical and financial data that may be necessary for
26 the proper understanding of the financial condition of the system and the
27 results of its operations. A synopsis of the annual report shall be
28 published for the information of members of the system.

29 K. The fund manager shall:

30 1. Maintain the accounts of the system and issue statements to each
31 employer annually and to each member who may request it.

32 2. Report the results of the actuarial valuations to the local boards
33 and employers.

34 3. Contract on a fee basis with an independent investment counsel to
35 advise the fund manager in the investment management of the fund and with an
36 independent auditing firm to audit the fund manager's accounting.

37 4. Permit the auditor general to make an annual audit and the results
38 shall be transmitted to the governor and the legislature.

39 5. Contract on a fee basis with an actuary who shall make actuarial
40 valuations of the system, be the technical adviser of the fund manager on
41 matters regarding the operation of the funds created by the provisions of the
42 system and perform other duties required in connection therewith. The
43 actuary must be a member of a nationally recognized association or society of
44 actuaries.

6. Employ, as administrator, a person, state department or other body to serve at the pleasure of the fund manager.

7. Establish procedures and guidelines for contracts with actuaries, auditors, investment counsel and legal counsel and for safeguarding of securities.

L. The administrator, under the direction of the fund manager, shall:

1. Administer this article.

2. Invest the funds of the system as the fund manager deems necessary and prudent as provided in subsections D and H of this section and subject to the investment ~~guidelines, statement of investment policy~~ POLICIES and fund objectives promulgated by the fund manager.

3. Establish and maintain an adequate system of accounts and records for the system which shall be integrated with the accounts, records and procedures of the employers so that the system operates most effectively and at minimum expense and that duplication of records and accounts is avoided.

4. In accordance with THE FUND MANAGER'S GOVERNANCE POLICY AND personnel rules and procedures and the budget adopted by the fund manager, hire such employees and services the administrator deems necessary and prescribe their duties, INCLUDING THE HIRING OF ONE OR MORE ASSISTANT ADMINISTRATORS TO MANAGE THE SYSTEM'S OPERATIONS, INVESTMENTS AND LEGAL AFFAIRS.

5. Be responsible for income, the collection of the income and the accuracy of all expenditures.

6. Recommend to the fund manager annual contracts for the system's actuary, auditor, investment counsel, legal counsel and safeguarding of securities.

7. Perform additional duties and powers prescribed by the fund manager and delegated to the administrator.

M. THE SYSTEM IS AN INDEPENDENT TRUST FUND AND the fund manager, the administrator, THE ASSISTANT ADMINISTRATORS and all persons employed by them are not under the jurisdiction of the department of administration OR ANY OTHER AGENCY, DEPARTMENT OR INSTRUMENTALITY OF THIS STATE or subject to section 38-611, ~~or~~ title 41, chapter 4, articles 5, ~~and~~ 6 OR 7 OR TITLE 41, CHAPTER 6. The salaries of the administrator, ASSISTANT ADMINISTRATORS and other employees of the fund manager are the sole determination of the fund manager. Contracts for goods and services approved by the fund manager are not subject to title 41, chapter 23. AS AN INDEPENDENT TRUST FUND WHOSE ASSETS ARE SEPARATE AND APART FROM ALL OTHER FUNDS OF THIS STATE, THE SYSTEM AND THE FUND MANAGER ARE NOT SUBJECT TO THE RESTRICTIONS PRESCRIBED IN SECTION 35-154 OR ARTICLE IX, SECTIONS 5 AND 8, CONSTITUTION OF ARIZONA.

N. The attorney general or an attorney approved by the attorney general and paid by the fund shall be the attorney for the fund manager and shall represent the fund manager in any legal proceeding OR FORUM THAT THE FUND MANAGER DEEMS APPROPRIATE. THE FUND MANAGER, ADMINISTRATOR, ASSISTANT ADMINISTRATORS AND EMPLOYEES OF THE FUND MANAGER ARE NOT PERSONALLY LIABLE

1 FOR ANY ACTS DONE IN THEIR OFFICIAL CAPACITY IN GOOD FAITH RELIANCE ON THE
2 WRITTEN OPINIONS OF THE FUND MANAGER'S ATTORNEY.

3 O. At least once in each five-year period after the effective date,
4 the actuary shall make an actuarial investigation into the mortality, service
5 and compensation experience of the members and beneficiaries of the system
6 and shall make a special valuation of the assets and liabilities of the funds
7 of the system. Taking into account the results of the investigation and
8 special valuation, the fund manager shall adopt for the system such
9 mortality, service and other tables deemed necessary.

10 P. On the basis of the tables the fund manager adopts, the actuary
11 shall make a valuation of the assets and liabilities of the funds of the
12 system not less frequently than every year. By November 1 of each year the
13 fund manager shall provide a preliminary report and by December 15 of each
14 year provide a final report to the governor, the speaker of the house of
15 representatives and the president of the senate on the contribution rate for
16 the ensuing fiscal year.

17 Q. Neither the fund manager nor any member or employee of the fund
18 manager shall directly or indirectly, for himself or as an agent, in any
19 manner use the monies or deposits of the fund except to make current and
20 necessary payments, nor shall the fund manager or any member or employee
21 become an endorser or surety or in any manner an obligor for monies loaned by
22 or borrowed from the fund.

23 R. The members of the fund manager who are appointed pursuant to
24 subsection A, paragraphs 2 and 5 of this section shall have at least ten
25 years' substantial experience as any one or a combination of the following:

26 1. A portfolio manager acting in a fiduciary capacity.

27 2. A securities analyst.

28 3. An employee or principal of a trust institution, investment
29 organization or endowment fund acting either in a management or an investment
30 related capacity.

31 4. A chartered financial analyst in good standing as determined by the
32 association for investment management and research.

33 5. A professor at the university level teaching economics or
34 investment related subjects.

35 6. An economist.

36 7. Any other professional engaged in the field of public or private
37 finances.

38 S. FINANCIAL OR COMMERCIAL INFORMATION THAT IS PROVIDED TO THE FUND
39 MANAGER, EMPLOYEES OF THE FUND MANAGER AND ATTORNEYS OF THE FUND MANAGER IN
40 CONNECTION WITH INVESTMENTS IN WHICH THE FUND MANAGER HAS INVESTED OR
41 INVESTMENTS THE FUND MANAGER HAS CONSIDERED FOR INVESTMENT IS CONFIDENTIAL,
42 PROPRIETARY AND NOT A PUBLIC RECORD IF THE INFORMATION IS INFORMATION THAT
43 WOULD CUSTOMARILY NOT BE RELEASED TO THE PUBLIC BY THE PERSON OR ENTITY FROM
44 WHOM THE INFORMATION WAS OBTAINED.

1 Sec. 10. Section 38-849, Arizona Revised Statutes, is amended to read:

2 38-849. Limitations on receiving pension: violation:
3 classification: reemployment after severance:
4 reinstatement of service credits: reemployment of
5 retired or disabled member

6 A. If a member is convicted of, or discharged because of, theft,
7 embezzlement, fraud or misappropriation of an employer's property or property
8 under the control of the employer, the member shall be subject to restitution
9 and fines imposed by a court of competent jurisdiction. The court may order
10 the restitution or fines TO be paid from any payments otherwise payable to
11 the member from the retirement system.

12 B. A person who knowingly makes any false statement or who falsifies
13 or permits to be falsified any record of the system with an intent to defraud
14 the system is guilty of a class 6 felony. If any change or error in the
15 records results in any member or beneficiary receiving from the system more
16 or less than the member or beneficiary would have been entitled to receive
17 had the records been correct, the local board shall correct such error, and
18 as far as practicable shall adjust the payments in such manner that the
19 actuarial equivalent of the benefit to which such member or beneficiary was
20 correctly entitled shall be paid. If a member is convicted of a crime
21 specified in this subsection the member shall be entitled to receive a lump
22 sum payment of the member's accumulated contributions but forfeits any future
23 compensation and benefits which would otherwise accrue to the member or the
24 member's estate under this article.

25 C. If a member who received a severance refund upon termination of
26 employment, as provided in section 38-846.02, is subsequently reemployed by
27 an employer, the member's prior service credits shall be cancelled and
28 service shall be credited only from the date the member's most recent
29 reemployment period commenced. However, if the former member's reemployment
30 with the same employer occurred within two years after the former member's
31 termination date, and, within ninety days after reemployment the former
32 member signs a written election consenting to reimburse the fund within one
33 year, the former member shall be required to redeposit the amount withdrawn
34 at the time of the former member's separation from service, with interest
35 thereon at the rate of nine per cent for each year compounded each year from
36 the date of withdrawal to the date of repayment. Upon satisfaction of this
37 obligation the member's prior service credits shall be reinstated.

38 D. If a retired member is reemployed by an employer, no contributions
39 shall be made on the retired member's account, nor any service credited,
40 during the period of such reemployment. ~~In addition,~~ NOTWITHSTANDING THIS
41 SUBSECTION, if a retired member subsequently becomes employed in the same
42 position by the employer from which the member retired, the system shall not
43 make pension payments to the retired member during the period of
44 reemployment. On subsequent termination of employment by the retired member,
45 the retired member is entitled to receive a pension based on the member's

1 service and compensation before the date of the member's reemployment. If a
 2 member who retired under disability is reemployed by an employer as an
 3 employee, that member shall be treated as if the member had been on an
 4 uncompensated leave of absence during the period of the member's disability
 5 retirement and shall be a contributing member of the system. FOR THE
 6 PURPOSES OF THIS SUBSECTION, "SAME POSITION" MEANS THE MEMBER IS IN A
 7 POSITION WHERE THE MEMBER PERFORMS DUTIES AND EXERCISES AUTHORITY THAT ARE
 8 THE SAME DUTIES THAT WERE PERFORMED AND THE SAME AUTHORITY THAT WAS EXERCISED
 9 BY THE MEMBER BEFORE THE MEMBER'S RETIREMENT.

10 E. A PERSON WHO DEFRAUDS THE SYSTEM OR WHO TAKES, CONVERTS, STEALS OR
 11 EMBEZZLES MONIES OWNED BY OR FROM THE SYSTEM AND WHO FAILS OR REFUSES TO
 12 RETURN THE MONIES TO THE SYSTEM ON THE FUND MANAGER'S WRITTEN REQUEST IS
 13 SUBJECT TO CIVIL SUIT BY THE SYSTEM IN THE SUPERIOR COURT OF MARICOPA
 14 COUNTY. ON ENTRY OF AN ORDER FINDING THE PERSON HAS DEFRAUDED THE SYSTEM OR
 15 TAKEN, CONVERTED, STOLEN OR EMBEZZLED MONIES OWNED BY OR FROM THE SYSTEM, THE
 16 COURT SHALL ENTER AN ORDER AGAINST THAT PERSON AND FOR THE SYSTEM AWARDED
 17 THE SYSTEM ALL OF ITS COSTS AND EXPENSES OF ANY KIND, INCLUDING ATTORNEY
 18 FEES, THAT WERE NECESSARY TO SUCCESSFULLY PROSECUTE THE ACTION. THE COURT
 19 SHALL ALSO GRANT THE SYSTEM A JUDICIAL LIEN ON ALL OF THE NONEXEMPT PROPERTY
 20 OF THE PERSON AGAINST WHOM JUDGMENT IS ENTERED PURSUANT TO THIS SUBSECTION IN
 21 AN AMOUNT EQUAL TO ALL AMOUNTS AWARDED TO THE SYSTEM, PLUS INTEREST AT THE
 22 RATE PRESCRIBED BY SECTION 44-1201, SUBSECTION A, UNTIL ALL AMOUNTS OWED ARE
 23 PAID TO THE SYSTEM.

24 F. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE FUND
 25 MANAGER MAY OFFSET AGAINST ANY BENEFITS OTHERWISE PAYABLE BY THE SYSTEM TO AN
 26 ACTIVE OR RETIRED MEMBER OR SURVIVOR ANY COURT ORDERED AMOUNTS AWARDED TO THE
 27 FUND MANAGER AND SYSTEM AND ASSESSED AGAINST THE MEMBER OR SURVIVOR.

28 Sec. 11. Section 38-850, Arizona Revised Statutes, is amended to read:

29 38-850. Assurances and liabilities; fund manager discretion;
 30 overpayments; underpayments

31 A. Nothing contained in the system shall be construed as a contract of
 32 employment between an employer and any employee, or as a right of any
 33 employee to be continued in the employment of an employer, or as a limitation
 34 of the rights of an employer to discharge any of its employees, with or
 35 without cause.

36 B. No employee shall have any right to, or interest in, any assets of
 37 the fund upon termination of his employment or otherwise, except as provided
 38 from time to time under the system, and then only to the extent of the
 39 benefits payable to such employee out of the assets of the fund. All
 40 payments of benefits as provided for in the system shall be made solely out
 41 of the assets of the fund and neither the employers, the fund manager, nor
 42 any member of the board shall be liable therefor in any manner.

43 C. Benefits, employee contributions or employer contributions,
 44 including interest, earnings and all other credits, payable under this system
 45 shall not be subject in any manner to anticipation, alienation, sale,

1 transfer, assignment, pledge, encumbrance, charge, garnishment, execution or
2 levy of any kind, either voluntary or involuntary, prior to actually being
3 received by the person entitled to the benefit, contribution, earning or
4 credit, under the terms of the system, and any attempt to anticipate,
5 alienate, sell, transfer, assign, pledge, encumber, charge or otherwise
6 dispose of any such right hereunder shall be void. The fund shall not in any
7 manner be liable for, or subject to, the debts, contracts, liabilities,
8 engagements or torts of any person entitled to such rights hereunder. This
9 subsection does not preclude arrangements for the withholding of taxes from
10 benefit payments, arrangements for the recovery of benefit overpayments,
11 arrangements for the transfer of benefit rights to another plan or
12 arrangements for direct deposit of benefit payments in an account in a bank,
13 savings and loan association or credit union if the arrangement is not part
14 of an arrangement constituting an assignment or alienation.

15 D. Neither the employers, the fund manager, ~~nor~~ THE FUND MANAGER'S
16 ADMINISTRATOR, ASSISTANT ADMINISTRATORS AND EMPLOYEES OR any member of a
17 local board guarantees the fund in any manner against loss or depreciation,
18 and none of them shall be liable for any act or failure to act, which is made
19 in good faith pursuant to the provisions of the system. The employers shall
20 not be responsible for any act or failure to act of a local board or any of
21 its members or for any act or failure to act of the fund manager. A local
22 board and the individual members ~~thereof~~ OF A LOCAL BOARD shall not be
23 responsible for any act or failure to act of any employer or the fund
24 manager.

25 E. The fund manager ~~may~~, in its discretion, MAY make payment to a
26 person entitled to any payment under the system who is under a legal
27 disability in any one or more of the following ways:

- 28 1. Directly to such person.
- 29 2. To his legal guardian or conservator.
- 30 3. To his spouse or to any other person charged with his support to be
31 expended for his benefit.

32 F. If, through misstatement or computation error, benefits are
33 underpaid or overpaid, there is no liability for any more than the correct
34 benefit sums under the system. Overpayments may be deducted from future
35 payments under the system, and underpayments may be added to future payments
36 under the system. A member or other benefit recipient may elect to repay in
37 a lump sum any overpayment in lieu of receiving reduced benefits under the
38 system.

39 G. Nothing in this section exempts employee benefits of any kind from
40 a writ of attachment, a writ of execution, a writ of garnishment and orders
41 of assignment issued by a court of record which are the result of a judgment
42 taken for arrearages for child support or for a child support debt or
43 restitution or fines imposed in accordance with section 38-849, subsection A.

Sec. 12. Section 38-855, Arizona Revised Statutes, is amended to read:

38-855. Transfer outside the public safety personnel retirement system

A member who changes employment or transfers or is assigned to a position in which such member is no longer eligible to be a member of this system, because of a change in duties or otherwise, with the same or another public employer of this state OR A MUNICIPALITY OF THIS STATE maintaining a retirement program for public officers or employees authorized by law may have all credited service transferred to the retirement system or program applicable to the new position. If the member does not transfer credited service as provided in this section within two years after the change in employment or transfer, the member shall request a refund of member contributions or shall have the credited service transferred pursuant to this section. Any transfer of credited service pursuant to this section to a state OR MUNICIPAL retirement system or plan shall be made pursuant to article 7 of this chapter and must be approved by the fund manager.

Sec. 13. Section 38-881, Arizona Revised Statutes, as amended by Laws 2002, chapter 335, section 8, is amended to read:

38-881. Definitions

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department, was incurred in the performance of the employee's duties and was the result of any of the following:

(a) Physical contact with inmates, prisoners, parolees or persons on probation.

(b) Responding to a confrontational situation with inmates, prisoners, parolees or persons on probation.

(c) A job related motor vehicle accident while on official business for the employee's employer. A job related motor vehicle accident does not include an accident that occurs on the way to or from work. Persons found guilty of violating a personnel rule, a rule established by the employee's employer or a state or federal law in connection with a job related motor vehicle accident do not meet the conditions for accidental disability.

2. "Accumulated member contributions" means the sum of all member contributions deducted from a member's salary and paid to the fund, plus member contributions transferred to the fund by another retirement plan covering public employees of this state, plus previously withdrawn accumulated member contributions which are repaid to the fund in accordance with this article, minus any benefits paid to or on behalf of a member.

3. "Average monthly salary" means one-thirty-sixth of the aggregate amount of salary THAT IS paid a member by a participating employer during a period of thirty-six consecutive months of service in which the member received the highest salary within the last one hundred twenty months of

1 service. Average monthly salary means the aggregate amount of ~~compensation~~
 2 ~~SALARY THAT IS~~ paid a member divided by the member's months of service if the
 3 member has less than thirty-six months of service. In the computation under
 4 this paragraph, a period of nonpaid or partially paid industrial leave shall
 5 be considered based on the salary the employee would have received in the
 6 employee's job classification if the employee was not on industrial leave.

7 4. "Beneficiary" means an individual who is being paid or who has
 8 entitlement to the future payment of a pension on account of a reason other
 9 than the individual's membership in the retirement plan.

10 5. "Claimant" means a member, beneficiary or estate that files an
 11 application for benefits with the retirement plan.

12 6. "Credited service" means credited service transferred to the
 13 retirement plan from another retirement system or plan for public employees
 14 of this state, plus those compensated periods of service as a member of the
 15 retirement plan for which member contributions are on deposit in the fund.

16 7. "Designated position" means:

17 (a) For a county:

18 (i) A county detention officer.

19 (ii) A nonuniformed employee of a sheriff's department whose primary
 20 duties require direct contact with inmates.

21 (b) For the state department of corrections and the department of
 22 juvenile corrections, only the following specifically designated positions:

23 (i) Food service.

24 (ii) Nursing personnel.

25 (iii) Corrections physician assistant.

26 (iv) Therapist.

27 (v) Corrections dental assistant.

28 (vi) Hygienist.

29 (vii) Corrections medical assistant.

30 (viii) Correctional service officer, including assistant deputy
 31 warden, deputy warden, warden and superintendent.

32 (ix) State correctional program officer.

33 (x) Parole or community supervision officers.

34 (xi) Investigators.

35 (xii) Teachers.

36 (xiii) Institutional maintenance workers.

37 (xiv) Youth corrections officer.

38 (xv) Youth program officer.

39 (xvi) Behavioral health treatment unit managers.

40 (xvii) The director and assistant directors of the department of
 41 juvenile corrections and the superintendent of the state educational system
 42 for committed youth.

43 (xviii) The director, deputy directors and assistant directors of the
 44 state department of corrections.

1 (xix) Other positions designated by the local board of the state
2 department of corrections or the local board of the department of juvenile
3 corrections pursuant to section 38-891, subsection E.

4 (c) For a city or town, a city or town detention officer.

5 (d) For an employer of an eligible group as defined in section 38-842,
6 full-time dispatchers.

7 8. "Employee" means a person determined by the local board to be
8 employed by a participating employer in a designated position.

9 9. "Employer" means an agency or department of this state or a
10 political subdivision of this state which has one or more employees in a
11 designated position.

12 10. "Fund" means the corrections officer retirement plan fund.

13 11. "Fund manager" means the fund manager of the public safety
14 personnel retirement system.

15 12. "Local board" means the retirement board of the employer that
16 consists of persons appointed or elected to administer the plan as it applies
17 to the employer's members in the plan.

18 13. "Member" means any employee who meets all of the following
19 qualifications:

20 (a) Who is a full-time paid person employed by a participating
21 employer in a designated position.

22 (b) Who is receiving salary for personal services rendered to a
23 participating employer or would be receiving salary except for an authorized
24 leave of absence.

25 (c) Whose customary employment is at least forty hours each week and
26 for more than six months in a calendar year.

27 14. "Normal retirement date" means the first day of the calendar month
28 immediately following an employee's completion of twenty years of service or,
29 in the case of a dispatcher, twenty-five years of service, the employee's
30 sixty-second birthday and completion of ten years of service or the month in
31 which the sum of the employee's age and years of credited service equals
32 eighty.

33 15. "Participating employer" means an employer which the fund manager
34 has determined to have one or more employees in a designated position or a
35 county, city or town which has entered into a joinder agreement pursuant to
36 section 38-902.

37 16. "Pension" means a series of monthly payments by the retirement
38 plan.

39 17. "Retired member" means an individual who is being paid a pension on
40 account of the individual's membership in the retirement plan.

41 18. "Retirement" means termination of employment after a member has
42 fulfilled all requirements for a pension.

43 19. "Retirement plan" or "plan" means the corrections officer
44 retirement plan established by this article.

20. "Salary" means the base salary ~~or base wages~~, shift differential pay and holiday pay paid a member in a designated position for personal services rendered to a participating employer on a regular monthly, semimonthly or biweekly payroll basis. Salary includes amounts that are subject to deferred compensation or tax shelter agreements. Salary does not include **PAYMENT FOR ON-CALL TIME OR** any remuneration or reimbursement other than as prescribed by this paragraph. **FOR THE PURPOSES OF THIS PARAGRAPH, "BASE SALARY" MEANS THE AMOUNT OF COMPENSATION EACH MEMBER IS REGULARLY PAID FOR PERSONAL SERVICES RENDERED TO AN EMPLOYER BEFORE THE ADDITION OF ANY EXTRA MONIES, INCLUDING OVERTIME PAY, SHIFT DIFFERENTIAL PAY, HOLIDAY PAY, ON-CALL PAY, FRINGE BENEFIT PAY AND SIMILAR EXTRA PAYMENTS.**

21. "Service" means employment rendered to a participating employer as an employee in a designated position. Any absence that is authorized by an employer, including any periods during which the employee is on an employer sponsored long-term disability program, is considered as service if the employee returns or is deemed by the employer to have returned to a designated position within the period of the authorized absence.

22. "Total and permanent disability" means a physical or mental condition that is not an accidental disability, that the local board finds totally and permanently prevents a member from engaging in any gainful employment and that is the direct and proximate result of the member's performance of the member's duty as an employee of a participating employer.

Sec. 14. Section 38-881, Arizona Revised Statutes, as amended by Laws 2005, chapter 324, section 1, is amended to read:

38-881. Definitions

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department, was incurred in the performance of the employee's duties and was the result of any of the following:

(a) Physical contact with inmates, prisoners, parolees or persons on probation.

(b) Responding to a confrontational situation with inmates, prisoners, parolees or persons on probation.

(c) A job related motor vehicle accident while on official business for the employee's employer. A job related motor vehicle accident does not include an accident that occurs on the way to or from work. Persons found guilty of violating a personnel rule, a rule established by the employee's employer or a state or federal law in connection with a job related motor vehicle accident do not meet the conditions for accidental disability.

2. "Accumulated member contributions" means the sum of all member contributions deducted from a member's salary and paid to the fund, plus member contributions transferred to the fund by another retirement plan covering public employees of this state, plus previously withdrawn

1 accumulated member contributions which are repaid to the fund in accordance
2 with this article, minus any benefits paid to or on behalf of a member.

3 3. "Average monthly salary" means one-thirty-sixth of the aggregate
4 amount of salary THAT IS paid a member by a participating employer during a
5 period of thirty-six consecutive months of service in which the member
6 received the highest salary within the last one hundred twenty months of
7 service. Average monthly salary means the aggregate amount of compensation
8 SALARY THAT IS paid a member divided by the member's months of service if the
9 member has less than thirty-six months of service. In the computation under
10 this paragraph, a period of nonpaid or partially paid industrial leave shall
11 be considered based on the salary the employee would have received in the
12 employee's job classification if the employee was not on industrial leave.

13 4. "Beneficiary" means an individual who is being paid or who has
14 entitlement to the future payment of a pension on account of a reason other
15 than the individual's membership in the retirement plan.

16 5. "Claimant" means a member, beneficiary or estate that files an
17 application for benefits with the retirement plan.

18 6. "Credited service" means credited service transferred to the
19 retirement plan from another retirement system or plan for public employees
20 of this state, plus those compensated periods of service as a member of the
21 retirement plan for which member contributions are on deposit in the fund.

22 7. "Designated position" means:

23 (a) For a county:

24 (i) A county detention officer.

25 (ii) A nonuniformed employee of a sheriff's department whose primary
26 duties require direct contact with inmates.

27 (b) For the state department of corrections and the department of
28 juvenile corrections, only the following specifically designated positions:

29 (i) Food service.

30 (ii) Nursing personnel.

31 (iii) Corrections physician assistant.

32 (iv) Therapist.

33 (v) Corrections dental assistant.

34 (vi) Hygienist.

35 (vii) Corrections medical assistant.

36 (viii) Correctional service officer, including assistant deputy
37 warden, deputy warden, warden and superintendent.

38 (ix) State correctional program officer.

39 (x) Parole or community supervision officers.

40 (xi) Investigators.

41 (xii) Teachers.

42 (xiii) Institutional maintenance workers.

43 (xiv) Youth corrections officer.

44 (xv) Youth program officer.

45 (xvi) Behavioral health treatment unit managers.

1 (xvii) The director and assistant directors of the department of
2 juvenile corrections and the superintendent of the state educational system
3 for committed youth.

4 (xviii) The director, deputy directors and assistant directors of the
5 state department of corrections.

6 (xix) Other positions designated by the local board of the state
7 department of corrections or the local board of the department of juvenile
8 corrections pursuant to section 38-891, subsection E.

9 (c) For a city or town, a city or town detention officer.

10 (d) For an employer of an eligible group as defined in section 38-842,
11 full-time dispatchers.

12 8. "Employee" means a person determined by the local board to be
13 employed by a participating employer in a designated position.

14 9. "Employer" means an agency or department of this state or a
15 political subdivision of this state which has one or more employees in a
16 designated position.

17 10. "Fund" means the corrections officer retirement plan fund.

18 11. "Fund manager" means the fund manager of the public safety
19 personnel retirement system.

20 12. "Local board" means the retirement board of the employer that
21 consists of persons appointed or elected to administer the plan as it applies
22 to the employer's members in the plan.

23 13. "Member" means any employee who meets all of the following
24 qualifications:

25 (a) Who is a full-time paid person employed by a participating employer
26 in a designated position.

27 (b) Who is receiving salary for personal services rendered to a
28 participating employer or would be receiving salary except for an authorized
29 leave of absence.

30 (c) Whose customary employment is at least forty hours each week and
31 for more than six months in a calendar year.

32 14. "Normal retirement date" means the first day of the calendar month
33 immediately following an employee's completion of twenty years of service or,
34 in the case of a dispatcher, twenty-five years of service, the employee's
35 sixty-second birthday and completion of ten years of service or the month in
36 which the sum of the employee's age and years of credited service equals
37 eighty.

38 15. "Participating employer" means an employer which the fund manager
39 has determined to have one or more employees in a designated position or a
40 county, city or town which has entered into a joinder agreement pursuant to
41 section 38-902.

42 16. "Pension" means a series of monthly payments by the retirement
43 plan.

44 17. "Retired member" means an individual who is being paid a pension on
45 account of the individual's membership in the retirement plan.

1 18. "Retirement" means termination of employment after a member has
2 fulfilled all requirements for a pension.

3 19. "Retirement plan" or "plan" means the corrections officer
4 retirement plan established by this article.

5 20. "Salary" means the base salary ~~or base wages~~, overtime pay, shift
6 differential pay and holiday pay paid a member in a designated position for
7 personal services rendered to a participating employer on a regular monthly,
8 semimonthly or biweekly payroll basis, except that for the purposes of this
9 paragraph the amount of overtime included shall not include payments to the
10 member for the sale of compensatory time. Salary includes amounts that are
11 subject to deferred compensation or tax shelter agreements. Salary does not
12 include **PAYMENT FOR ON-CALL TIME OR** any remuneration or reimbursement other
13 than as prescribed by this paragraph. **FOR THE PURPOSES OF THIS PARAGRAPH,**
14 **"BASE SALARY" MEANS THE AMOUNT OF COMPENSATION EACH MEMBER IS REGULARLY PAID**
15 **FOR PERSONAL SERVICES RENDERED TO AN EMPLOYER BEFORE THE ADDITION OF ANY**
16 **EXTRA MONIES, INCLUDING OVERTIME PAY, SHIFT DIFFERENTIAL PAY, HOLIDAY PAY,**
17 **ON-CALL PAY, PAYMENTS FOR THE SALE OF COMPENSATORY TIME, FRINGE BENEFIT PAY**
18 **AND SIMILAR EXTRA PAYMENTS.**

19 21. "Service" means employment rendered to a participating employer as
20 an employee in a designated position. Any absence that is authorized by an
21 employer, including any periods during which the employee is on an employer
22 sponsored long-term disability program, is considered as service if the
23 employee returns or is deemed by the employer to have returned to a
24 designated position within the period of the authorized absence.

25 22. "Total and permanent disability" means a physical or mental
26 condition that is not an accidental disability, that the local board finds
27 totally and permanently prevents a member from engaging in any gainful
28 employment and that is the direct and proximate result of the member's
29 performance of the member's duty as an employee of a participating employer.

30 Sec. 15. Section 38-886, Arizona Revised Statutes, is amended to read:

31 **38-886. Accidental disability retirement; total and permanent**
32 **disability retirement; qualification; amount of**
33 **pension; conditions for continued payment of pension**

34 A. A member may retire and receive an accidental disability pension or
35 a total and permanent disability pension if the local board finds that all of
36 the following conditions occur:

37 1. An application for disability retirement is filed with the
38 retirement plan or the local board by either the member or the member's
39 participating employer after the disabling incident or within one year after
40 the date the member ceases to be an employee. Timely application for an
41 accidental or a total and permanent disability pension is a prerequisite to
42 receipt of the pension.

43 2. The member undergoes all medical examinations and tests ordered by
44 the local board and releases to the local board all medical reports and
45 records requested by the local board.

3. The local board determines that an accidental disability or total and permanent disability condition exists which meets the requirements for accidental disability retirement or total and permanent disability retirement.

B. The effective date of an accidental disability retirement or a total and permanent disability retirement shall not predate the date of disability or the date the member ceases to be an employee.

C. The amount of an accidental disability pension or a total and permanent disability pension is equal to fifty per cent of the member's average monthly salary or the amount computed using the member's average monthly salary and the member's actual years of credited service, whichever is higher.

D. During the period, if any, between the effective date of accidental disability retirement or total and permanent disability retirement and the date the disabled retired member attains sixty-two years of age the local board may require a disabled retired member to undergo periodic reevaluation of the continuation of accidental disability or total and permanent disability. If the disabled retired member refuses to submit to reevaluation, the local board may suspend payment of the pension. If the refusal continues for one year, the local board may revoke the disabled retired member's rights to the pension. An accidental disability pension or a total and permanent disability pension is terminated if the local board finds the retired member no longer meets the requirements for accidental disability retirement or total and permanent disability retirement.

E. A member does not qualify for an accidental disability pension or a total and permanent disability pension if the local board determines that the member's disability results from any of the following:

1. An injury suffered while engaged in a felonious criminal act or enterprise.

2. Service in the armed forces of the United States which entitles the member to a veteran's disability pension.

3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the plan.

F. Local boards shall base a finding of total and permanent disability and accidental disability on medical evidence obtained by a medical doctor or clinic selected by the local board AND SHALL DISREGARD ANY OTHER MEDICAL EVIDENCE OR OPINIONS. IF THE LOCAL BOARD RETAINS MORE THAN ONE MEDICAL DOCTOR OR CLINIC IN CONNECTION WITH ANY CASE, the local board shall resolve ANY material conflicts in THE medical evidence THAT IS PRESENTED BY THE LOCAL BOARD'S MEDICAL DOCTORS OR CLINICS.

Sec. 16. Section 38-888, Arizona Revised Statutes, is amended to read:

38-888. Pension to the surviving spouse of a member who dies before retirement

A. The surviving spouse of a deceased active member is entitled to receive a pension for life if each of the following conditions is met:

1 1. The member was married to the surviving spouse for at least two
2 years at the time of death.

3 2. The surviving spouse files a written application with the
4 retirement plan for the survivor benefit.

5 B. The amount of a surviving spouse's pension is forty per cent of the
6 deceased member's average monthly salary.

7 C. The surviving spouse of a deceased member who is killed in the line
8 of duty or dies from injuries suffered in the line of duty is entitled to
9 receive a monthly amount equal to the deceased member's average monthly
10 benefit compensation. FOR THE PURPOSES OF THIS SUBSECTION, "KILLED IN THE
11 LINE OF DUTY" MEANS THE DECEDENT'S DEATH WAS THE DIRECT AND PROXIMATE RESULT
12 OF PHYSICAL INJURIES INCURRED IN THE PERFORMANCE OF THE DECEDENT'S PUBLIC
13 SAFETY DUTIES AND DOES NOT INCLUDE SUICIDE.

14 Sec. 17. Section 38-897, Arizona Revised Statutes, is amended to read:
15 38-897. Assignments prohibited; liability of fund

16 A. The right of an individual to a pension, to a refund of accumulated
17 member contributions, to the pension itself or to any other right accrued or
18 accruing to any individual, and the monies and assets of the retirement plan,
19 are not subject to execution, garnishment, attachment, the operation of
20 bankruptcy or insolvency law or other process of law except a qualified
21 domestic relations order and are unassignable except as may be otherwise
22 specifically provided.

23 B. Any attempt to anticipate, alienate, sell, transfer, assign,
24 pledge, encumber, charge or otherwise dispose of any right provided in
25 subsection A is void. The fund is not liable in any manner for or subject to
26 the debts, contracts, liabilities, engagements or torts of any person
27 entitled to these rights.

28 C. This section does not exempt employee benefits of any kind from a
29 writ of attachment, a writ of execution, a writ of garnishment and orders of
30 assignment issued by a court of record as the result of a judgment for
31 arrearages of child support or for child support debt.

32 D. A PERSON WHO DEFRAUDS THE PLAN OR WHO TAKES, CONVERTS, STEALS OR
33 EMBEZZLES MONIES OWNED BY OR FROM THE PLAN AND WHO FAILS OR REFUSES TO RETURN
34 THE MONIES TO THE PLAN ON THE FUND MANAGER'S WRITTEN REQUEST IS SUBJECT TO
35 CIVIL SUIT BY THE PLAN IN THE SUPERIOR COURT OF MARICOPA COUNTY. ON ENTRY OF
36 AN ORDER FINDING THE PERSON HAS DEFRAUDED THE PLAN OR TAKEN, CONVERTED,
37 STOLEN OR EMBEZZLED MONIES OWNED BY OR FROM THE PLAN, THE COURT SHALL ENTER
38 AN ORDER AGAINST THAT PERSON AND FOR THE PLAN AWARDING THE PLAN ALL OF ITS
39 COSTS AND EXPENSES OF ANY KIND, INCLUDING ATTORNEY FEES, THAT WERE NECESSARY
40 TO SUCCESSFULLY PROSECUTE THE ACTION. THE COURT SHALL ALSO GRANT THE PLAN A
41 JUDICIAL LIEN ON ALL OF THE NONEXEMPT PROPERTY OF THE PERSON AGAINST WHOM
42 JUDGMENT IS ENTERED PURSUANT TO THIS SUBSECTION IN AN AMOUNT EQUAL TO ALL
43 AMOUNTS AWARDED TO THE PLAN, PLUS INTEREST AT THE RATE PRESCRIBED BY SECTION
44 44-1201, SUBSECTION A, UNTIL ALL AMOUNTS OWED ARE PAID TO THE PLAN.

1 E. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE FUND
2 MANAGER MAY OFFSET AGAINST ANY BENEFITS OTHERWISE PAYABLE BY THE PLAN TO AN
3 ACTIVE OR RETIRED MEMBER OR SURVIVOR ANY COURT ORDERED AMOUNTS AWARDED TO THE
4 FUND MANAGER AND PLAN AND ASSESSED AGAINST THE MEMBER OR SURVIVOR.

5 Sec. 18. Section 38-900.01, Arizona Revised Statutes, is amended to
6 read:

7 38-900.01. Statutory construction

8 A. Because the plan as enacted at a particular time is a unique
9 amalgam of rights and obligations having a critical impact on the actuarial
10 integrity of the plan, the legislature intends that the plan as enacted at a
11 particular time be construed and applied as a coherent whole and without
12 reference to any other provision of the plan in effect at a different time SO
13 THAT MEMBERS, SURVIVORS AND BENEFICIARIES ARE NOT ENTITLED TO CHOOSE
14 PROVISIONS FROM DIFFERENT GENERATIONS OF THE PLAN'S ENABLING LEGISLATION WITH
15 THE INTENT OF DEMANDING THE RIGHT TO RETIRE OR RECEIVE BENEFITS UNDER THE
16 COMBINED TERMS OF THESE PROVISIONS. MEMBERS AND SURVIVORS ARE ENTITLED TO BE
17 GOVERNED BY THE SUBSTANTIVE TERMS OF THE PLAN'S ENABLING LEGISLATION IN
18 EFFECT DURING ANY POINT OF THE MEMBER'S SERVICE. TO PREVENT AN UNEXPECTED
19 ACTUARIAL LOSS, TO AVOID UPSETTING THE ACTUARIAL INTEGRITY OF THE PLAN AT
20 ANY GIVEN PERIOD OF TIME, TO AVOID DEFEATING THE PLAN'S PURPOSE OF PROVIDING
21 UNIFORM BENEFITS AND TO AVOID PROVIDING SOME MEMBERS AND SURVIVORS WITH
22 BENEFITS MORE ADVANTAGEOUS THAN THOSE ENJOYED BY OTHERS, MEMBERS AND
23 SURVIVORS ARE NOT ENTITLED TO CHOOSE PROVISIONS FROM DIFFERENT GENERATIONS OF
24 THE PLAN'S ENABLING LEGISLATION BUT SHALL ELECT ONE SUCH GENERATION TO
25 CONTROL ALL OF THEIR PENSION RIGHTS.

26 B. The plan was established in order to provide a uniform, consistent
27 and equitable statewide program for those eligible corrections officers as
28 defined by the plan. A member of the plan does not have a vested right to
29 benefits under the plan until the member files an application for benefits
30 and is found eligible for those benefits. An eligible claimant's right to
31 benefits vests on the date of the member's application for those benefits or
32 the member's last day of employment under the plan, whichever occurs first.

33 Sec. 19. Section 38-901, Arizona Revised Statutes, is amended to read:

34 38-901. Transfers into or out of retirement plan

35 A. A member who changes employment or transfers or is assigned to a
36 position in which the member is no longer eligible to be a member of this
37 plan, because of a change in duties or otherwise, with the same or another
38 employer of this state OR A MUNICIPALITY OF THIS STATE participating in a
39 different retirement system or plan, is entitled to have all credited service
40 transferred to the retirement system or plan applicable to the new position
41 in accordance with article 7 of this chapter.

42 B. A member who begins employment with a participating employer in
43 this plan and who has credited service from a different system or plan may
44 transfer the prior service to this plan in accordance with article 7 of this
45 chapter.

Sec. 20. Section 38-921, Arizona Revised Statutes, is amended to read:

38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state; definitions

A. An active or inactive member of a state retirement system or plan OR A MUNICIPAL RETIREMENT SYSTEM, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter, ~~or~~ the corrections officer retirement plan provided for in article 6 of this chapter, THE CITY OF PHOENIX EMPLOYEES' RETIREMENT SYSTEM OR THE CITY OF TUCSON SUPPLEMENTAL RETIREMENT SYSTEM, may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:

1. The board or fund manager governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board or fund manager governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board or fund manager of the retirement system or plan to which the member is contributing.

B. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan OR THE MUNICIPAL RETIREMENT SYSTEM and who is currently making member contributions to or receiving credited service from the state retirement system or plan OR MUNICIPAL RETIREMENT SYSTEM.

2. "Inactive member" means a member of the state retirement system or plan OR MUNICIPAL RETIREMENT SYSTEM who previously made contributions to the state retirement system or plan OR MUNICIPAL RETIREMENT SYSTEM and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the state retirement system or plan OR MUNICIPAL RETIREMENT SYSTEM.

(c) Is not currently making contributions to the state retirement system or plan OR MUNICIPAL RETIREMENT SYSTEM.

(d) Has not withdrawn contributions from the state retirement system or plan OR MUNICIPAL RETIREMENT SYSTEM.

1 Sec. 21. Section 38-922, Arizona Revised Statutes, is amended to read:
2 38-922. Transfer or redemption of service credits
3 A. Service credits qualified in accordance with section 38-921 may be
4 transferred or redeemed in accordance with this section.
5 B. In the case of a member whose contributions remain on deposit with
6 the prior retirement system or plan, the following shall be calculated:
7 1. The prior system or plan shall calculate the amount equal to the
8 actuarial present value of a member's projected benefits under the prior
9 system or plan as calculated by that system's or plan's actuary using the
10 same actuarial method and assumptions used in calculating that system's or
11 plan's funding requirements based on the transferring member's service
12 credits at the time of transfer.
13 2. The system or plan to which the member is transferring shall
14 calculate the increase in the actuarial present value of the projected
15 benefits provided as a result of the transfer of the member's service
16 credits. This calculation shall be performed by that system's or plan's
17 actuary using the same actuarial method and assumptions used in calculating
18 that system's or plan's funding requirements based upon the transferring
19 member's service credits at the time of transfer.
20 C. In the event a member decides to transfer:
21 1. If the amount calculated in subsection B, paragraph 2 is greater
22 than the amount calculated in subsection B, paragraph 1:
23 (a) The prior system or plan shall transfer to the present system or
24 plan the greater of the amount calculated in subsection B, paragraph 1 or the
25 member's accumulated contribution account balance.
26 (b) If the amount transferred is less than the amount calculated under
27 subsection B, paragraph 2, the transferring member shall elect either to pay
28 the difference or to accept a reduced transfer of service credits. If the
29 member elects to pay the difference, the amount paid shall be added to the
30 member's accumulated contribution account balance. If the member elects to
31 accept a reduced transfer of service credits, the amount of service credits
32 transferred shall be equal to the amount of service credits used in making
33 the calculation under subsection B, paragraph 1 multiplied by the ratio of
34 the amount calculated under subsection B, paragraph 1 to the amount
35 calculated under subsection B, paragraph 2.
36 2. If the amount calculated in subsection B, paragraph 2 is less than
37 or equal to the amount calculated in subsection B, paragraph 1, the prior
38 system or plan shall transfer to the present system or plan the greater of
39 the amount calculated in subsection B, paragraph 2 or the member's
40 accumulated contribution account balance.
41 D. In the case of an applicant who has withdrawn his member
42 contributions from another prior system or plan of this state OR A
43 MUNICIPALITY OF THIS STATE, the applicant shall pay into the new system or
44 plan to which he is transferring an amount equal to the increase in the
45 actuarial present value of the projected benefits provided by the service

1 credits being redeemed and this amount shall be included in the member's
2 current accumulated contribution account balance. This calculation shall be
3 performed by the actuary of the system or plan to which the service credits
4 are being transferred using the same actuarial method and assumptions used in
5 calculating that system's or plan's funding requirements.

6 E. Service credits shall not be applied to the applicant's account
7 until such time as complete payment is made to the retirement system or plan
8 to which the applicant is transferring. On completion of the transfer
9 provided for in this article, the member's rights in the retirement system or
10 plan from which the member is transferring are extinguished.

11 Sec. 22. Conditional enactment

12 Section 38-881, Arizona Revised Statutes, as amended by Laws 2005,
13 chapter 324, section 1 and section 14 of this act, becomes effective on the
14 date prescribed in Laws 2005, chapter 324, section 2 but only on the
15 occurrence of the condition prescribed by Laws 2005, chapter 324, section 2.